IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2840 of 2004

Dr.U.S. Nagzarkar .....Petitioner

Versus

The State of Maharashra & Ors....Respondents

Mr. G.D. Utangale i/b. Utangale & Co., for the Petitioner
Mr. P.M. Mokashi, A.G.P. for Respondent Nos. 1 and 2 and 5 and 6.
Mr. K.K. Pandey, for Respondent NO.3.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 19th April,2005

. Rule Heard forthwith.

2. The petitioner herein impugns the order dated 21st April, 2003 whereby the Competent Authority directed his eviction on the ground that he is in unauthorised occupation.

3. Admittedly the premises were allotted by MHADA in favour of Respondent No.4. The respondent No.3 who was also an allottee of MHADA in some other place Respondent Nos. 3 and 4 exchanged premises between themselves pursuant to which the premises which the respondent No.3 was occupying were in fact allotted to Respondent NO.4 and the premises which the Respondent NO.4 is occupying were allotted to Respondent No.3. They made an application for MHADA for the transfer. That was rejected.

. The petitioner thereafter was inducted in the premises occupied by Respondent NO.3. It is not necessary for us to go into that controversy or the dispute between the petitioner and the respondent No.3 as ultimately pursuant to the proceedings under Section 145 of Cr.P.C. the petitioner was

put back in the premises and now continues to be in the premises.

4. The show cause notice issued to the petitioner by MHADA was principally on two grounds that there was no N.O.C. of the original allottee i.e. the respondent NO.4 and further that the petitioner was using the premises as a Dispensary and, therefore, for a purpose other than residence. The petitioner before the Authority placed N.O.C. issued by the respondent NO.4 and also pointed out that he has discontinued the use of the premises other than for residence. Evidence was led amongst others by Respondent NO.4 . Respondent NO.4 did not deny his signature on the affidavit. He, however, denied that the N.O.C. had been granted. Once the signature on the document is admitted it was for the respondent No.4 to explain whether the document was procured by fraud or otherwise which the said Respondent NO.4 has not been able to establish. In other words the N.O.C. was proved by the petitioner and had to be considered.

5. An application for regularisation of the petitioner is already pending before MHADA. In these circumstances the ends of justice would be met if the following order is passed:-

. The application for regularisation by the petitioner be considered by the Estate Manager of MHADA and disposed of according to law within a period of 4 months from today. On such such disposal and if the order be adverse to the petitioner, the said order not to be acted upon for a period of 8 weeks thereafter.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)